## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

ARNOLD E. WEBB JR.,	)	
Individually and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:17-cv-00624-RK
	)	
DR PEPPER SNAPPLE GROUP, INC., and	)	
DR PEPPER/SEVEN UP, INC.,	)	
	)	
Defendants.	)	

# <u>DEFENDANTS' MOTION TO DISMISS</u> <u>PLAINTIFF'S PUTATIVE CLASS ACTION COMPLAINT</u>

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendants Dr Pepper Snapple Group, Inc. and Dr Pepper/Seven Up, Inc., hereby respectfully move this Court to dismiss Plaintiff's Complaint (doc. 1) in its entirety, including all claims and prayers for relief asserted therein. In support of this Motion, Defendants state:

1. Plaintiff's Complaint must be dismissed because he has not alleged any actionable claim in any Count of the Complaint; as well as because he has failed to allege any of the claims asserted in the Complaint with the requisite particularity. Fed. R. Civ. P. 9(b) and 12(b)(6). Although the entire complaint is predicated upon Plaintiff's assertion that Defendants misrepresented their product, Plaintiff has failed to allege even the basic facts necessary to state such a claim, such as what advertising he saw, when he saw that marketing, or which purchases he made in reliance on it. (*See generally* doc. 1). Moreover, Plaintiff's core contention in the Complaint, upon which every claim is based, is that Defendants misrepresented that their product contained a "detectable" amount of ginger among its ingredients. (Doc. 1 at 3). Yet, none of the

marketing alleged in the Complaint made any such representation, and, in any event, the ingredient labeling on the beverage at issue<sup>1</sup> disclosed its contents, thereby clarifying any potential ambiguity. *See, e.g., Kelly v. Cape Cod Potato Chip Co.*, 81 F. Supp. 3d 754, 761-2 (W.D. Mo. 2015) (dismissing plaintiffs' claim that "natural" marketing was deceptive where label disclosed presence of unnatural ingredients). For these reasons, too, the Complaint is unsustainable, and Defendant's Motion is properly granted.

2. In addition, Plaintiff's prayers for injunctive and declaratory relief separately fail because Plaintiff has not alleged the requisite Article III standing necessary to proceed on claims for such relief. See, e.g., In re Simply Orange Juice Mktg. & Sale Practices Litig., No. 4:12-md-02361-FJG, 2017 WL 3142095, at \*6 (W.D. Mo. July 24, 2017) (rejecting injunctive class claims where plaintiffs were "already on notice of defendant's practices" and did not allege intent to purchase orange juice in future); Nicosia v. Amazon.com, Inc., 834 F.3d 220, 239 (2d Cir. 2016) (plaintiff lacked standing where he failed to allege intent to use Amazon in future to buy food, drug, weight loss products). Because the Plaintiff individually lacks standing, the Court also lacks jurisdiction over the putative class claims for declaratory and injunctive relief. See Wheeler v. Am. Profit Recovery, Inc., No. 4:15CV368 RLW, 2017 WL 44585, at \*2 (E.D. Mo. Jan. 3, 2017). Thus, the claims for this relief must be dismissed on this basis as well.

WHEREFORE, for these reasons and those reasons set forth in the accompanying Suggestions in Support of this Motion, and as further supported by the concurrently-filed Request for Judicial Notice, Defendants respectfully requests that the Court dismiss Defendant's Complaint in its entirety.

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<sup>&</sup>lt;sup>1</sup> Judicial notice of this labeling and its contents is requested pursuant to Fed. R. Evid. 201. *See* Defendants' concurrently-filed Request for Judicial Notice.

DATED: September 27, 2017 By: <u>/s/ Stacey R. Gilman</u>

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Attorneys for Defendants Dr Pepper Snapple Group, Inc. and Dr Pepper/Seven Up, Inc.

#### **CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2017, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send notice of filing to all counsel of record.

/s/ Stacey R. Gilman

Attorney for Defendants DR PEPPER SNAPPLE GROUP, INC. AND DR PEPPER/SEVEN UP, INC.

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